IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16606 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIBHAI NATHUBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16606 of 2003

MR CHETAN K PANDYA for Petitioner No. 1

Ms Mita S Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 16/03/2004

ORAL JUDGEMENT

The peitioner-detenu has preferred this petition

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 29.8.2003 passed by respondent no.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner.

2. The petitioner has challenged the above order on several grounds. The petitioner has contended that the detaining authority has claimed privilege under section 9(2) of the said Act. However, the correctness and genuineness of the contents of those statements have not been verified. It has also been contended that the detaining authority has caused delay in passing the order of detention after verification of statements of witnesses. It has further been contended that there is also a delay in dealing and deciding representation of the petitioner. It has further been contended that the co-accused have been released as their detention order has been quashed by this Court. It has further been contended that the order in question may amount to a threat to law and order situation and it cannot be termed as a threat to public order. That on the whole, the detention order is illegal and deserves to be set aside. The petitioner, therefore, prays that the present petition be allowed, the impugned detention order against the petitioner dated 29.8.2003 be set aside and the petitioner be set at liberty forthwith.

3. On receipt of the petition, rule was issued and in response to the service of notice of rule, Ms. Mita S Panchal, learned AGP appears on behalf of the respondents. There is no affidavit on record. I have heard the learned Advocate for the petitioner and the learned AGP for the State. They have taken me through the petition and also through the accompaniments to the detention order.

4. Learned Advocate for the petitioner has argued at length that the order in question shows that the petitioner has been wrongly branded as a bootlegger inasmuch as two prohibition cases have been registered against him in connection with Bardoli police Station C.R. 716/03 dated 29.5.2003 and C.R. No.717/03 dated 31.5.2003. This can be gathered from the grounds for detaining the petitioner placed at Annexure 'A' page no.13.

5. Learned Advocate for the petitioner, during the course of his argument, has also argued that two other

detenus were detained by the aforesaid detaining authority on the same date. It is also contended that the said two detenus were also involved in the aforesaid two prohibition offences. He has further argued that the aforesaid two detenus were released by this court by quashing and setting aside their detention order in two Special Civil Applications being No. 16541 and 16542 of 2003 dated 26.2.2004. (Coram: Hon'ble Mr Justice N G Nandi) He has therefore, contended that when the said two detenus stood as co-accused in the aforesaid two offences and when on appreciation of material before the court, this Court had quashed and set aside their detention order, then on the principle of parity, the present petitioner also deserves similar treatment at the hands of the Court. On hearing the learned Advocate for the petitioner and the learned AGP, it is found that the present petitioner and those two detenus Gunvantbhai and Ramanbhai Rathod were also co-accused in the aforesaid two offences. All the three were ordered to be detained on the same date of the date. However, the present petitioner was in judicial custody and, therefore, his actual detention was little late and, therefore, the petition of this petitioner was not heard when other two co-detenus referred to hereinabove were heard in their respective petitions. Therefore, on the question of parity, this petition deserves to be allowed and the petitioner deserves to be released from the detention.

6. On going through the record it is found that the above contention is supported by the record and the judgments in the aforesaid two matters dated 26.2.2004. When the petitioner stood on par with those two detenus and when the detention in respect of those two detenus have been set aside by this Court on appreciation of materials before the Court, the materials being the same, the present petitioner also deserves similar treatment. There is no reason to take a view different from the view taken by this Court in the aforesaid two matters. In that view of the matter, this petition is required to be allowed and the detention order is required to be set aside.

7. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 29.8.2003 passed by respondent No.2 - District Magistrate, Surat, detaining the petitioner-detenu under section 3(2) of the detaining the petitioner-detenu under section 3(2) of the petitioner-detenu is ordered to be set at liberty forthwtih if not required in any other case.

Rule is made absolute accordingly. D.S. permitted.

[D P Buch, J.]

msp